

## **MINUTES**

### **MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON EDUCATION AND CULTURAL RESOURCES**

**Call to Order:** By **CHAIRMAN DON RYAN**, on February 18, 2005 at 3:00 P.M., in Room 102 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Don Ryan, Chairman (D)  
Sen. Gregory D. Barkus (R)  
Sen. Jerry W. Black (R)  
Sen. Kim Gillan (D)  
Sen. Bob Hawks (D)  
Sen. Sam Kitzenberg (R)  
Sen. Jesse Laslovich (D)  
Sen. Jeff Mangan (D)  
Sen. Dan McGee (R)  
Sen. Bob Story Jr. (R)

**Members Excused:** Sen. Jim Elliott (D)

**Members Absent:** None.

**Staff Present:** Connie Erickson, Legislative Branch  
Lois O'Connor, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted:	SB 333, 2/18/2005; SB 363, 2/18/2005; SB 414, 2/18/2005; SB 445, 2/18/2005; SB 460, 2/18/2005; SB 468, 2/18/2005
Executive Action:	SB 333, SB 363, SB 414, SB 468, SB 460, SB 445, SB 419, SJ 12, SB 383, SB 335, SB 359, SB 263

**HEARING ON SB 333****Opening Statement by Sponsor:**

**SEN. FRANK SMITH (D), SD 16**, said that SB 333 was introduced to right a wrong enacted by the 2003 Legislature in that it passed SB 424 that contained provisions related to school retirement funds. Unless the state's funding system for schools is deemed equalized by the U.S. Department of Education, a state cannot force a school district to utilize their federal impact aid funds in any way that will result in the reduction of state aid to the districts. Impact aid officials and the U.S. Department of Education held a hearing in Montana, and it ruled that state law violated federal law. At that time, the Governor's Office appealed the decision to a higher authority. There have been and still are court actions occurring over the illegal law. He added that recently, Governor Schweitzer rescinded the prior Governor's appeal, and the state must now get the exception into Montana law so that state law complies with federal law.

**SEN. SMITH** said that Montana school districts were financially harmed by the passage of SB 424 which is why SB 333 has an immediate effective date and a retroactive applicability date to retirement benefits paid in school fiscal year beginning on or after July 1, 2004.

***{Tape: 1; Side: A; Time Counter: 5.3}***

**Proponents' Testimony:**

**Michael Dahlem, Attorney, Indian Impact Schools of Montana**, provided a list of Montana school districts that receive federal impact aid and written comments in support of SB 333.

**[EXHIBIT\(eds40a01\)](#)**

**[EXHIBIT\(eds40a02\)](#)**

***{Tape: 1; Side: A; Time Counter: 8.7}***

**Lynda Brannon, Director, Indian Impact Schools of Montana**, said that SB 333 addresses impact aid and makes it retroactive to July 1, 2004 to enable school districts to get caught up through the GTB system and the county retirement levy.

**Madalyn Quinlan, Office of Public Instruction (OPI)**, said that with the current U.S. District Court's ruling, OPI is encouraging school districts to identify those employees who are paid, in total or in part from the impact aid fund, to begin immediately charging the cost for those employees to the retirement fund and

recoup any previous expenditures that they had been charging to the impact aid fund by moving them into the district retirement fund. There is a procedure in statute for schools to adopt budget amendments. If districts do not have enough money to cover the budget amendment, they could request that money from the county. If the counties do not have the money, they would need to increase their retirement levies to recover the money. **Ms.**

**Quinlan** said that although OPI supported SB 147, SB 333 is a very necessary piece of legislation.

**{Tape: 1; Side: A; Time Counter: 13.3}**

**Eric Feaver, MEA-MFT**, said that MEA-MFT likes SB 147 better because it addresses the whole problem created by requiring school districts to pay the retirement costs of their federally funded employees. However, SB 333 address the problem that the U.S. District Court sees. He urged support of both SB 147 and SB 333.

**Bob Vogel, MT School Boards Association (MTSBA); Darrel Rud, School Administrators of MT (SAM); Dave Puyear, MT Rural Education Association (MREA); Gary McDonald, Chairman, Roosevelt County Commission; and Ivan Small, Superintendent of Schools, Poplar**, spoke in support of SB 333.

**{Tape: 1; Side: A; Time Counter: 14.2}**

**Gwen Andersen, Business Manager, Browning Public Schools**, said that the determination from the U.S. Department of Education says that state law is in violation of the federal impact aid law. Browning Public School likes to follow state law, and it would like Montana laws to coincide with federal law. She said that although SB 147 would be very helpful to impact aid schools, it does not address retroactivity. **Ms. Andersen** said that the passage of SB 424 created many budgeting problem for school districts because they started their budgeting processes thinking that they could charge their retirement costs to the retirement fund. She would like to see the budgeting problems come to an end.

**Ali Bovington, Attorney General's Office**, said that the state stipulated to a judgment preventing further implementation of 20-9-501, MCA, as it applies to school district employees who are paid with federal impact aid funds. She said that the Attorney General's Office supports SB 333.

**Opponents' Testimony:** None.

**Informational Testimony:** None.

**{Tape: 1; Side: A; Time Counter: 18.7}**

**Questions from Committee Members and Responses:**

**SEN. ROBERT STORY, SD 30**, asked if the state is required to pay back the funds retroactively. **Ms. Bovington** said that the judgment notes that the defendants and all persons and political subdivisions so enjoined shall, retroactive to July 1, 2004, reimburse Montana school districts for retirement.

**SEN. JESSE LASLOVICH, SD 43**, asked what happens if SB 333 fails to pass. **Ms. Bovington** said that Montana would have a statute that is in violation of the judgment of the federal district court. Federal law preempts Montana law. The state would still be obliged to change the funding mechanism for retirement paid to employees paid by federal impact aid money and would still have to reimburse it.

**SEN. STORY** asked where the money was coming from to pay the obligation retroactively. **Ms. Quinlan** said the process to proceed would not affect fiscal year 2005. School districts can adopt budget amendments or they can draw on their reserves. Next year, they can levy to replenish those reserves. The hit will be in 2006. **SEN. STORY** asked how the fiscal note in 2006 could be less than the fiscal note in 2007. **Ms. Quinlan** said that much of the fiscal note was built on figuring that districts had levied in fiscal year 2005 for the retirement costs of employees paid out of the impact aid fund. In addition, there is a \$3 million supplement for OPI if it is short on K-12 BASE aid, and the guarantee account, which is a statutory appropriation for K-12 BASE aid, is actually coming in higher than anticipated and covering some additional costs.

**{Tape: 1; Side: A; Time Counter: 25.9}**

**Closing by Sponsor:**

**SEN. SMITH** requested the Committee's support of SB 333.

**{Tape: 1; Side: A; Time Counter: 26.9}**

**EXECUTIVE ACTION ON SB 333**

**Motion/Vote:** **SEN. STORY** moved that SB 333 DO PASS. Motion carried unanimously by voice vote. **SEN. ELLIOTT** voted aye by proxy.

*{Tape: 1; Side: A; Time Counter: 28.2}*

**HEARING ON SB 363**

**Opening Statement by Sponsor:**

**SEN. CAROL WILLIAMS (D), SD 46**, said that OPI requested SB 363, and it accomplishes three things: (1) realigns state law with the recent reauthorization of the Individual With Disabilities Education Act (IDEA); (2) provides OPI with additional flexibility to reduce the paperwork and burden for teachers and specialists; and (3) provides for general statute cleanup. She offered a proposed amendment by the MT Rural Education Association (MREA).

**EXHIBIT**(eds40a03)

*{Tape: 1; Side: B; Time Counter: 2.1}*

**Proponents' Testimony:**

**Bob Runkel, Director of Special Education, OPI**, provided written comments in support of SB 363.

**EXHIBIT**(eds40a04)

**Darrel Rud, SAM; Bob Vogel, MTSBA, Dave Puyear, MREA; and Eric Feaver, MEA-MFT**, spoke in support of SB 363 and the proposed amendment.

**Opponents' Testimony:** None.

**Informational Testimony:** None.

*{Tape: 1; Side: B; Time Counter: 14.3}*

**Questions from Committee Members and Responses:**

**SEN. JEFF MANGAN, SD 12**, asked if the Youth Court was able to make surrogate parent appointments within 20 days of receiving a nomination. **Mr. Runkel** said that the history is variable from district to district. Some have had a difficult time with appointments while others have made the appointment a streamlined process. **SEN. MANGAN** asked if children under two years of age and between 19 and 22 years of age could be provided services, would the state be in violation of the Constitution if it did not offer services to another class of person. **Mr. Runkel** said that there are a number of additional rights offered to the protected class

of children with disabilities that do not guarantee the same rights to other groups. Approximately one-half of the schools in Montana do permissively serve children with disabilities in the those age groups, particularly in the 19 through 21 years-of-age group. He knew of no challenge or lawsuit that has ever occurred that the parent of a child without a disability challenged a district to provide the same level of service.

**Closing by Sponsor:**

SEN. WILLIAMS requested the Committee support.

*{Tape: 1; Side: B; Time Counter: 17.4}*

**EXECUTIVE ACTION ON SB 363**

**Motion:** SEN. MANGAN moved that SB 363 DO PASS.

**Motion/Vote:** SEN. MANGAN moved to approve the proposed amendment. (See Exhibit #3) Motion carried unanimously by voice vote. SEN. ELLIOT voted aye by proxy.

**Discussion:**

Connie Erickson, Legislative Services Division, requested that if the Committee adopts the proposed amendment that it do so with the understanding that she be allowed to make formatting and outline changes to fit within the text of SB 363.

**Vote:** SEN. MANGAN moved that SB 363 DO PASS AS AMENDED. Motion carried unanimously by voice vote. SEN. ELLIOTT voted aye by proxy.

*{Tape: 1; Side: B; Time Counter: 19.2}*

**HEARING ON SB 414**

**Opening Statement by Sponsor:**

SEN. KIM GILLAN (D), SD 24, said that because SB 414 would require numerous and lengthy amendments to move forward, she requested that the Committee table the bill.

**Proponents' Testimony:** None.

**Opponents' Testimony:** None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. GILLAN said that her school district requested that SB 414 be tabled, and it was too late to give the Committee written notice of her request.

*{Tape: 1; Side: B; Time Counter: 21.3}*

EXECUTIVE ACTION ON SB 414

Motion/Vote: SEN. MCGEE moved that SB 414 BE TABLED. Motion carried unanimously by voice vote. SEN. ELLIOTT voted aye by proxy.

*{Tape: 1; Side: B; Time Counter: 22.1}*

HEARING ON SB 419

Opening Statement by Sponsor:

SEN. DON RYAN (D), SD 10, provided an overview of a fact sheet regarding SB 419 that revises the moratorium on new school districts by expanding an elementary district into a K-12 district.

[EXHIBIT](#)(eds40a05)

*{Tape: 1; Side: B; Time Counter: 26.5}*

Proponents' Testimony:

Taylor Middleton, Resident, Big Sky, provided written comments in support of SB 419.

[EXHIBIT](#)(eds40a06)

*{Tape: 1; Side: B; Time Counter: 29.1}*

REP. RICK RIPLEY, HD 17, said that he supported SB 419 because (1) he was a strong supporter of local control; (2) SB 419 moves toward K-12 school districts, and the bill could be valuable in

the future; and (3) one shoe does not fit all, and Montana needs as many tools in its educational tool box as it can have.

**SEN. BILL TASH, SD 36**, spoke in support of SB 419 which supports local control and best addresses the concerns of the citizens of Big Sky and the Ophir School District.

**Mike Scholz, Resident, Big Sky; Hannah Bildahl, Freshman, Bozeman High School and Resident of Big Sky; Caroline Henley, Resident, Big Sky; and Loren Bough, Resident, Big Sky;** provided written comments in support of SB 419.

[EXHIBIT\(eds40a07\)](#)

[EXHIBIT\(eds40a08\)](#)

[EXHIBIT\(eds40a09\)](#)

[EXHIBIT\(eds40a10\)](#)

*{Tape: 2; Side: A; Time Counter: 11.1}*

**Bob Vogel, MTSBA**, said that over one year ago, MTSBA received a call from the Ophir School District asking about the process for the District to construct a high school. MTSBA said that the largest obstacle was the moratorium on the construction of a high school in that district. A resolution came before the MTSBA, and its membership voted to support the concept of lifting the moratorium for this particular purpose.

*{Tape: 2; Side: A; Time Counter: 12.4}*

**Dave Puyear, MREA**, said that the description of the problems of the residents at Big Sky is a great analysis and review of the issue imbedded in the term that is heard every day in the Legislature--local control. Nationwide research shows again and again the value of small schools. Large schools are breaking into small organizational units for the value of small schooling. MREA supports SB 419.

*{Tape: 2; Side: A; Time Counter: 14.7}*

**Joe Mazurek, Representing the Residents of Big Sky**, said that SB 419 creates an opportunity for school districts to revise the moratorium on the new school districts. It means a great deal to more than just the residents of Big Sky, but other communities in Montana as well. He requested the Committee's support.

*{Tape: 2; Side: A; Time Counter: 15.4}*



**Opponents' Testimony:**

**Eric Feaver, MEA-MFT**, said that no matter how meritorious it would be for the Ophir School District to have a high school, SB 419 provides the opportunity for any elementary district in the state to create a high school district by a vote of only the elementary district residents. The moratorium imposed in 1991 was specifically meant to prevent the fracturing of school districts that the state could not afford. The passage of SB 419 would mean every opportunity for the patrons of a elementary district to create a high school. If SB 419 has merit, **Mr. Feaver** requested that it be significantly pared down to address very isolated status schools. In addition, he felt it may be useful if Bozeman High School, which is in the process of reviewing the possibility of building a new high school, considered building the new facility in or close to the Ophir School District.

**{Tape: 2; Side: A; Time Counter: 19.5}**

**Dave Severson, Missoula Education Association**, said that the way that SB 419 is written could cause great harm to the Missoula High School District and, possibly Kalispell and Billings. If SB 419 were passed, one of the largest elementary districts in Missoula County may be able to divide and separate from the Missoula County Public School District (MCPS), which could mean the closure of Big Sky High School.

**Pat McHugh, Interim Business Manager, MCPS**, provided a copy of an adopted resolution by the Board of Trustees from MCPS which opposes the lifting of the moratorium and opposes SB 419.

**EXHIBIT (eds40a11)**

**Mr. McHugh** said that the costs to districts such as MCPS would be substantial given the fact that the larger outlying elementary districts are located within 5 to 10 miles of existing high schools. The construction of new high schools by the elementary districts would not be an efficient use of the state's taxpayer resources.

**Informational Testimony:** None.

**{Tape: 2; Side: A; Time Counter: 22.7}**

**Questions from Committee Members and Responses:**

**SEN. MANGAN** asked if the language in SB 419 was too broad. **SEN. RYAN** said that the testimony heard from the residents of Big Sky indicates that just the bus ride alone to Bozeman High School limits the educational opportunities for students of the Ophir

School District. He said that he would like to see SB 419 amended to address the problem because he did not want to tear apart any Montana school districts. If an appropriation is added to SB 419, the Committee must ensure that it does not exceed 11% of the tax base of the Bozeman School District.

**SEN. BOB HAWKS, SD 33**, asked if Big Sky had attempted any negotiation with the Bozeman School District on anything that might represent an expansion of the school district. **Mr. Bough** said that he initiated a call to the Superintendent of the Bozeman High School District to see if he would consider putting a school in Big Sky within the existing school district. His response was no. In addition, the Bozeman School Board recently supported building a new school in the center of Bozeman and not even consider building it somewhere closer to the canyon. This issue is not just restricted to Big Sky but all of the school areas to the west of Bozeman that are currently being disadvantaged. **SEN. HAWKS** said that since Bozeman is in the process of making major decisions about constructing a new high school, he gave his guarantee that he would keep the issue on the table.

*{Tape: 2; Side: B; Time Counter: 1.5}*

**Closing by Sponsor:**

**SEN. RYAN** said that there are some things that could be done to make SB 419 more palatable to all involved, and it would give the Legislature more time to work on a new funding formula to reduce the impact on the Bozeman School District. However, to say that the Legislature is going to deny a thriving and growing area an essential service is an issue that needs to be addressed.

*{Tape: 2; Side: B; Time Counter: 3.0}*

**HEARING ON SB 445**

**Opening Statement by Sponsor:**

**SEN. DAN MCGEE (R), SD 29**, said that SB 445 gives the Board of Regents the ability to waive tuition for a qualified member of the active Montana National Guard (MTNG) as the Regents may do for all other persons who qualify. **SEN. MCGEE** said that he did not sign the fiscal note because he disagreed with it. SB 445 requires no funding or requirement on the part of the Regents. It only allows.

**{Tape: 2; Side: B; Time Counter: 5.5}**

**Proponents' Testimony:**

**Roger Hagan, MTNG Associations**, said that the combined MTNG Associations have dusted off many ideas that they have shelved for years because they felt it important to bring many of the options back for discussion in this legislative session. In 1995 after speaking with a National Guard recruiter, then **REP.**

**KITZENBERG**, introduced education-benefit legislation to help the MTNG with recruitment issues. The reason the Associations bring to the Legislature a benefit proposal that is National Guard specific is because it is important for Montana to have a strong National Guard that is trained and equipped to respond to state disasters and emergencies as well as to conduct its mission.

**Mr. Hagan** said that recruiting challenges are not unique to Montana, and the tuition waiver is not intended to be immediately implemented or given carte blanche to all MTNG members. The key term is "qualified" member of the MTNG. The MTNG is requesting that it be given the same status as all other waiverable categories. He added that the fiscal note is predicated on a "What if?". It is not a general fund expenditure nor is there appropriations language in SB 445. The fiscal note indicated only that there could be a hit to the university system budget of \$1.8 million in 2006 and \$2.7 million in 2007.

**{Tape: 2; Side: B; Time Counter: 19.5}**

**Harris Himes, Retired Marine Officer**, said that the National Guard men and women are comrades in arms, and he requested that they be recognized as such whatever the fiscal impact may be.

**{Tape: 2; Side: B; Time Counter: 21.3}**

**Opponents' Testimony:**

**Rod Sundsted, Associate Commissioner for Fiscal Affairs, Montana University System**, said that if qualified MTNG members are added to the waiver list, it would be the only group in the list who does not currently receive a fee waiver. It puts the Board of Regents and the university system in a difficult position. There options are: (1) to grant the waiver at a cost of \$4.5 million over the next biennium which increases student tuition for those who do pay tuition by \$150 per student, or (2) to say to the National Guard that they are the only group that the university system is not going to grant the waiver to. **Mr. Sundsted** added that if it is truly state policy that National Guard members be able to go to public universities free of tuition, then put the

money into the existing National Guard Scholarship Program and put the money up front rather than putting the university systems in a position to either say no or raise tuition to fund it.

**Connie Summers, Students of Montana State University-Billings**, provided a summary sheet of fees currently paid by MSU-Billings students at a cost of \$525.50 per semester per student. She questioned whether the Committee, even for a good cause, could put any more on the backs of students. She opposed SB 445.

**EXHIBIT** (eds40a12)

*{Tape: 2; Side: B; Time Counter: 25.9}*

**Megan Dumas, Associated Students, Montana State University-Bozeman**, spoke in opposition to SB 445.

**Jessica Grennan, Associated Students, University of Montana-Missoula**, said that although she has great respect for the nation's military, her concern is that SB 445 would increase student tuition and put another fee on to U of M and Montana university students in general. She said that for every \$2 million that the university system spends equals a 1% tuition increase.

**Informational Testimony:** None.

*{Tape: 2; Side: B; Time Counter: 27.4}*

**Questions from Committee Members and Responses:**

**SEN. SAM KITZENBERG, SD 18**, asked how many hours of public service, fire fighting and otherwise, has the National Guard provided the state. **Mr. Hagan** said that there have been 13 activations in the first 40 years. In the last 13 years, the MTNG has been activated 22 times. The fires of 2000 were the largest mobilization of the National Guard in history. **SEN. KITZENBERG** said that when it comes to the time when the National Guard needs something from the Legislature, the comments have always been that the price is too high. He did not feel that the two equated.

**SEN. HAWKS** asked about other benefits given the MTNG. **Mr. Hagan** said that the National Guard and the Reserves have equal benefits under the Montgomery GI Bill for selected reserve. They also receive insurance of \$16.25 a month for \$250,000. If members stayed for 20 years and retired at 40 years of age, they would not draw a retirement annuity until 60 years of age and the insurance premiums will increase from \$16.25 a month to approximately \$195.00 a month. Medical benefits are not provided

unless members are placed on active duty or if injured while in a federal National Guard active duty status.

**SEN. HAWKS** asked what qualifications are needed to be determined a "qualified" MTNG member and what is the cost. **SEN. McGEE** responded that qualifications would be determined by the Montana Department of Military Affairs, and he was unsure about the cost. He added that the key to SB 445 is to simply move MTNG members from the back of the page to the front of the page. **Mr. Hagan** added that the Associations did not want to open up SB 445 carte blanche to every MTNG member without putting sideboards on it. The sideboards would be established in cooperation between the university system and the Department of Military Affairs in rule.

*{Tape: 3; Side: A; Time Counter: 7.1}*

**SEN. JESSE LASLOVICH, SD 43**, asked if tuition and fees were waived for all of the individuals under the current list and who grants the waiver. **Mr. Sundsted** said that waivers are granted to all individuals currently on the waiver list and are granted by the Board of Regents. **SEN. LASLOVICH** asked if the waiver is granted and there is no state funding, will the university systems increase tuition. **Mr. Sundsted** said that the Regents either have to say yes to the waiver and raise tuition to pay for them or say no to the National Guard, even though they were moved up in statute with the other waivers.

*{Tape: 3; Side: A; Time Counter: 11.2}*

**SEN. LASLOVICH** asked when the MTNG would request the waiver from the Regents. **Mr. Hagan** said that he envisioned the Associations, through a resolution process, would encourage the Department of Military Affairs to work with the Regents to increase the MTNG's recruiting capabilities by working out a program of sideboards for targeted recruiting efforts.

*{Tape: 3; Side: A; Time Counter: 15.0}*

**SEN. MANGAN** offered a conceptual amendment to strike all of the new language in SB 445 and add a new subsection (e) to say "may waive tuition for up to 5,000 credits...". He felt that the proposed amendment would put everyone on the same playing field.

*{Tape: 3; Side: A; Time Counter: 16.4}*

**Closing by Sponsor:**

**SEN. McGEE** said that the Department of Military Affairs is an Executive Branch agency, and any budget issues will be overseen

by that Branch. He said the Regents has discretion in a number of tuition credit applications, not only the ones listed in the MCA. SB 445 is not intended to usurp any other entity but to raise the recognition of the National Guard for the universities so that they may, given certain qualifications, grant tuition waivers to recruited members of the MTNG.

***{Tape: 3; Side: A; Time Counter: 18.7}***

**HEARING ON SB 460**

**Opening Statement by Sponsor:**

**SEN. DAN WEINBERG (D), SD 2**, said that SB 460 allows the trustees of a unified school district to conduct more than one, mail-ballot school bond election on the same day. It would apply to all 105 unified districts in the state.

***{Tape: 3; Side: A; Time Counter: 22.1}***

**Proponents' Testimony:**

**Bob Vogel, MTSBA; Rick Chiotti, OPI; and Dave Puyear, MREA**, spoke in support of SB 460 because it ensures that unified districts stay in control of their own elections.

**Opponents' Testimony:** None.

**Informational Testimony:** None.

***{Tape: 3; Side: A; Time Counter: 24.6}***

**Questions from Committee Members and Responses:**

**SEN. STORY** asked if it were possible that more than two districts could unify. **Mr. Vogel** said that he is only aware of 105 unified school districts, typically an elementary and high school district that has one board. **SEN. STORY** asked if statute allows only two, would it be wise to insert "or more" after "two" in Page 1, line 24. **Mr. Vogel** said that it would be a good suggestion.

**Closing by Sponsor:**

**SEN. WEINBERG** said that if time does not allow for the result of the proposed amendment, he would amend it accordingly on the Senate floor.

***{Tape: 3; Side: A; Time Counter: 27.2}***

**HEARING ON SB 468**

**Opening Statement by Sponsor:**

**SEN. JEFF MANGAN (D), SD 12**, said that the MTSBA asked that he introduce SB 468 to address the issue of when a student gets suspended or excluded from school for violating a policy. In the past and if the student is an athlete, for example, they get a temporary restraining order (TRO) before the event so that they can participate, but they have still violated the rules. Consequences to that have been that the team and the school suffer because the High School Association takes it out on the team because of the ineligible student that participated. SB 468 allows a judge to contact the school to get information on what the ramifications could be before granting the TRO.

***{Tape: 3; Side: A; Time Counter: 29.2}***

**Proponents' Testimony:**

**Bob Vogel, MTSBA**, said that SB 468 allows school districts to present their side of a situation before a TRO is granted. It does not state that the order cannot be granted. MTSBA is only asking that before a TRO is granted that the school district be allowed to present its case to ensure that unintended consequences do not happen to the school district and to students that participate in certain activities.

***{Tape: 3; Side: B; Time Counter: 3.1}***

**Dave Puyear, MREA**, said that SB 468 opens communications with districts and with the procedures. It helps the confusion and heartache that occurs in communities when decisions have to be made very quickly. He spoke in support of SB 468.

**Kathy Bramer, OPI**, said that SB 468 is good for schools. When OPI looks at fairness and fair play, it is important that the Court hear both sides of the story before a TRO is granted. She said that when all students play by the rules, TROs are not needed. However, there are situations where TROs are invoked. SB 468 gives school districts the opportunity to present their side to the Court before that decision is made.

**Opponents' Testimony:** None.

**Informational Testimony:** **Mike Beckman, Executive Director, MT High School Association (MHSA)**.

**{Tape: 3; Side: B; Time Counter: 6.1}**

**Questions from Committee Members and Responses:**

**SEN. GILLAN** asked if a student is suspended from an activity covered by the Association and a TRO is not granted, what is the normal time to request and have a hearing. **Mr. Beckman** said if the situation is particular to a school, it depends on each school district's policy. SB 468 relates specifically to school district policies, such as drug and alcohol policies. TROs can also be filed against the MHSA to prevent it from invoking a penalty for using ineligible players.

**SEN. STORY** asked if the school board had to notice a meeting or go through a formal procedure before the TRO is granted. **Mr. Vogel** said that the procedure could happen very quickly and typically does.

**SEN. RYAN** asked if an incident happens on a Friday, for example, and a student is suspended, is the state taking away the potential for due process. **Ms. Bramer** said that one of the reasons that TROs are granted is people feeling that there is irrevokable harm done by waiting and not getting an immediate decision. However, she believed that more often than not, there was an opportunity to have a decision heard from both sides before a final decision is made.

**SEN. GILLAN** offered a conceptual amendment to strike "notice and" on line 22.

**{Tape: 3; Side: B; Time Counter: 14.4}**

**Closing by Sponsor:**

**SEN. MANGAN** said that if a student violates a school policy, particularly something serious such as drugs and alcohol or violence, it is not fair to the other students who could potentially be put at risk. SB 468 provides school districts with a reasonable opportunity to say that they take these issues seriously. The judge can then weigh it and decide whether to grant the TRO.

**{Tape: 3; Side: B; Time Counter: 16.9}**

**EXECUTIVE ACTION ON SB 468**

**Motion:** **SEN. MANGAN** moved that SB 468 DO PASS.



Motion/Vote: SEN. MANGAN moved a conceptual amendment to strike "notice and" in the Title and on Page 1, line 22. Motion passed unanimously by voice vote. SEN. ELLIOTT voted aye by proxy.

Motion: SEN. MANGAN moved amendment #SB046801.ace which adds the language "or other exclusion". Motion passed unanimously by voice vote. SEN. ELLIOTT voted aye by proxy.

EXHIBIT(eds40a13)

Motion/Vote: SEN. MANGAN moved that SB 469 DO PASS AS AMENDED. Motion carried unanimously by voice vote. SEN. ELLIOTT voted aye by proxy.

{Tape: 3; Side: B; Time Counter: 21.1}

EXECUTIVE ACTION ON SB 460

Motion: SEN. STORY moved that SB 460 DO PASS.

Motion: SEN. STORY moved a conceptual amendment on Page 1, line 24 to insert "or more" following "two". Motion pass unanimously by voice vote. SEN. ELLIOTT voted aye by proxy.

Motion/Vote: SEN. STORY moved that SB 460 DO PASS AS AMENDED. Motion carried unanimously by voice vote. SEN. ELLIOTT voted aye by proxy.

{Tape: 3; Side: B; Time Counter: 24.0}

EXECUTIVE ACTION ON SB 445

Motion: SEN. MCGEE moved that SB 445 DO PASS.

Motion: SEN. MCGEE moved a conceptual amendment to strike the ";" on Page 1, line 22 and insert "as prescribed by the Department of Military Affairs;".

Discussion:

SEN. MCGEE said that the Department would make the determination of who is a qualified member of the MTNG and who is eligible for the waiver. With the Department being an Executive Branch agency, it ties it to the whole budgeting system. In addition, he did not feel that the fiscal note was correct. However, with a fiscal note, it will go to Senate Finance and Claims and buy some time for the MTNG to work out amendment language.

**SEN. HAWKS** asked if the language "in consultation with the university system" be included. **SEN. MCGEE** said that is the way it would work.

**Motion:** **SEN. MCGEE** moved a substitute motion to further amend his conceptual amendment to add "as prescribed by the Department of Military Affairs, the Board of Regents, and the university system".

**Discussion**

**SEN. GREGORY BARKUS, SD 4,** asked how the Legislature could offer these types of benefits to paid volunteers working in a chosen field. He said that in reviewing the rest of the waivers given, there are some major impacts to families. However, he has trouble with the waiver when someone is just a member of the MTNG. **SEN. MCGEE** said his view is that the MTNG is not only serving the citizens of Montana in times of disaster, but they are willing to put their lives on the line if necessary. Very few people are called upon to do that, and the waivers are used for recruitment purposes.

*{Tape: 4; Side: A; Time Counter: 0.7}*

**Motion:** **SEN. MANGAN** moved a substitute amendment to strike everything in SB 445 that is new and insert a new subsection (e) on Page 2, line 12 stating "waive tuition for up to 5,000 credits each academic year in accordance with the Montana National Guard Education Benefit Program provided for in 10-1-121."

**Discussion:**

**SEN. MANGAN** said that (1) at some point, the Legislature felt that the MTNG Education Benefit Program was important enough for the use of waivers; (2) it will put MTNG members on the same playing field as everyone else who is spelled out in the bill; and (3) it has a built in cap at the 5,000 credit mark which he felt would significantly impact the fiscal note. **SEN. MCGEE** was amenable to **SEN. MANGAN'S** substitute amendment.

**Discussion:**

**SEN. BARKUS** asked about the fiscal impact of 5,000 credit hours. **SEN. MANGAN** was unsure, but it was still permissive by the Regents and it was capped to the Benefit Program already in current law. He said that SB 445 would still go to Senate Finance and Claims, but he felt it stood a better chance of survival with the parameters.

**Vote:** SEN. MANGAN'S substitute amendment carried unanimously by voice vote. SEN. ELLIOTT voted aye by proxy.

**Motion/Vote:** SEN. MCGEE moved that SB 445 DO PASS AS AMENDED. Motion carried unanimously by voice vote. SEN. ELLIOTT voted aye by proxy.

*{Tape: 4; Side: A; Time Counter: 5.4}*

**EXECUTIVE ACTION ON SB 419**

**Motion:** SEN. LASLOVICH moved that SB 419 DO PASS.

**Motion:** SEN. MANGAN moved amendment #SB041901.ace.

**EXHIBIT** (eds40a14)

**Discussion:**

SEN. MANGAN said that SB041901.ace provides distance and enrollment starting points to alleviate concerns that SB 419 was too expansive.

SEN. HAWKS said that the amendment does not provide any protections for larger school districts as to how it may effect them economically and allow them to plan for future expansion or retraction. While the Committee is solving one problem, it is creating another. He did not want to see SB 419 go to far until some assurances can be provided at both ends.

**Vote:** SEN. MANGAN'S motion to approve amendment #SB041901.ace passed on a 10 to 1 voice vote with SEN. HAWKS voting no. SEN. ELLIOTT voted aye by proxy.

**Motion:** SEN. STORY moved that SB 419 DO PASS AS AMENDED.

**Discussion:**

SEN. RYAN said that a fiscal note has been requested for SB 419 but that it had not yet arrived.

SEN. STORY believed that there would not be a fiscal impact to SB 419 in this biennium. In response to SEN. HAWKS' concern, he said that the school district that is losing the students or area has veto power. It would be very difficult for a school to withdraw property, although they may plea the case and get it done. It would give the school district losing property a window to deal with it.

**Ms. Erickson** said that the Joint Rules state that if a bill requires a fiscal note, the bill may not be reported from Committee for second reading unless the bill is accompanied by the fiscal note.

**Ms. Quinlan** said that a fiscal note was requested, and there is zero fiscal impact for this biennium. The two districts that expressed interest were Lockwood and Ophir. OPI did not figure that either schools could convert to a K-12 district and get a new high school built and running within this biennium.

**{Tape: 4; Side: A; Time Counter: 12.6}**

**SEN. MANGAN** said there are two options, (1) make a motion to move SB 419 straight to Senate Finance and Claims or (2) pass SB 419 out of Committee and hold it until the fiscal note comes in. He said that the Standing Committee Report does not have to be signed until it is read over the Rostrum.

**SEN. HAWKS** asked about **SEN. GILLAN'S** comfort level with SB 419 since she had a school in her district that could be impacted.

**SEN. GILLAN** said that at this point, she feels comfortable voting for SB 419, but was unsure when it reached the floor of the Senate. She added that although she did not want to proliferate school districts, she also did not want to say that the state wants economic development but, by the way, a person has to settle in existing communities.

**SEN. RYAN** said that SB 419 would not create another school district. It would simply enlarge a current elementary district. He also felt that it is a discussion that the Committee needs to keep alive because it is an issue that needs to be address in how the state currently funds schools.

**Motion/Vote:** **SEN. STORY'S** motion that SB 419 DO PASS AS AMENDED carried unanimously by voice vote. **SEN. ELLIOTT** voted aye by proxy.

**{Tape: 4; Side: A; Time Counter: 21.9}**

#### **EXECUTIVE ACTION ON SJ 12**

**Motion:** **SEN. KITZENBERG** moved that SJ 12 DO PASS.

#### **Discussion:**

**SEN. KITZENBERG** said that SJ 12 is a resolution to the Board of Public Education recommending the adoption of more civic education in Montana.

**SEN. MCGEE** said that according to 20-4-301, MCA--duties of a teacher--includes language about civic instruction. He asked why SJ 12 was necessary. **SEN. KITZENBERG** said that there is a national renewal related to citizenship. The U.S. Congress does not feel that states are giving adequate attention to citizenship.

**Vote:** **SEN. KITZENBERG'S** motion that SB SJ 12 DO PASS carried on a 9 to 2 voice vote with **SENATORS STORY** and **BARKUS** voting nay. **SEN. ELLIOTT** voted aye by proxy.

*{Tape: 4; Side: A; Time Counter: 26.6}*

#### EXECUTIVE ACTION ON SB 383

**Motion:** **SEN. MANGAN** moved that SB 383 DO PASS.

**Motion/Vote:** **SEN. MANGAN** moved the approval of amendment #SB038301.aem to add audiologist. Motion carried unanimously by voice vote. **SEN. ELLIOTT** voted aye by proxy.

#### EXHIBIT(eds40a15)

**Motion:** **SEN. MANGAN** moved the approval of amendment #SB038301.ace to add the language "newly hired" pathologists. Motion passed unanimously by voice vote. **SEN. ELLIOTT** voted aye by proxy.

#### EXHIBIT(eds40a16)

**Motion:** **SEN. MANGAN** moved that SB 383 DO PASS AS AMENDED.

#### Discussion:

**SEN. LASLOVICH** asked what the fiscal note would look like. **SEN. MANGAN** said 4 to 5 speech-language pathologist and audiologist per year times the stipend, or \$15,000 a year. **SEN. LASLOVICH** said that the Legislature has to be cautious and cognizant of the fact that little things add up and that the state does not have a limited amount of money. He felt that he could not support SB 383.

**SEN. STORY** said that he liked the concept of a stipend to target money to attract teachers into certain fields. His concern with SB 383 is that the pathologists must be members of the American Speech, Language, and Hearing Association to qualify. According to the fiscal note, a person can be certified to teach in the field without being members of that organization. He does not

want to use state money to encourage people to belong to an organization.

**Vote:** SEN. MANGAN's motion carried on a 6 to 5 roll call vote with SENATORS RYAN, GILLAN, HAWKS, LASLOVICH, AND MCGEE voting nay. SEN. ELLIOTT voted aye by proxy.

*{Tape: 4; Side: B; Time Counter: 7.8}*

**EXECUTIVE ACTION ON SB 335**

**Motion:** SEN. LASLOVICH moved that SB 335 DO PASS.

**Motion:** SEN. LASLOVICH moved the approval of amendment #SB033501.ace.

**EXHIBIT** (eds40a17)

**Ms. Erickson** said that SB033501.ace reinserts the exemption for the university system. With the amendment, SB 335 applies only to military installations to comply with federal law. Vendors would not be prohibited from the university system. They would bid for vending privileges like everyone else.

**SEN. RYAN** said that the current vendor at Malmstrom Air Force Base grosses \$22,000 a year, and it takes four hours a week to service the machines. **SEN. MCGEE** said that the current vendor at Malmstrom Air Force Base could be bumped in favor of someone who is blind so the process would not be competitive. **Mr. Schweitzer** said that it would be a possibility because federal law allows an absolute priority to a blind vendor.

**Vote:** SEN. LASLOVICH'S motion to approve amendment #SB033501.ace carried on a unanimous voice vote. SEN. ELLIOTT voted aye by proxy.

**Motion/Vote:** SEN. LASLOVICH moved that SB 335 DO PASS AS AMENDED.

**Discussion:**

**SEN. STORY** said that SB 335 is a clean up bill and does not have policy implications because the contracts are already available. After research, he found that the Blind Vendor Program was established in the 1930s. There is also a similar program under state law, but it gives only a 3% preference to blind vendors. However, it does create problems with established vendors because

a blind vendor can take over an established vendor's operation. It is trading one person's job for another.

**SEN. MANGAN** said that according to testimony, blind vendors realized that they were excluded only on paper, and they have not chosen to do anything about it until they solved the problem at the state level. He felt that the blind vendors did everything right.

**Motion/Vote:** **SEN. LASLOVICH'S** motion that SB 335 DO PASS AS AMENDED carried unanimously by voice vote. **SEN. ELLIOTT** voted aye by proxy.

*{Tape: 4; Side: B; Time Counter: 16.2}*

**EXECUTIVE ACTION ON SB 359**

**Motion:** **SEN. STORY** moved that SB 359 DO PASS.

**Motion:** **SEN. STORY** moved the approval of amendment #SB35902.ace.

**EXHIBIT** (eds40a18)

**Discussion:**

**Ms. Quinlan** said that the amendment addresses the issue discussed during the hearing on SB 359 regarding which students would be eligible for ANB funding. The issue raised was that a school district had to both offer full access to the program and the student had to be able to receive full access. The circumstance raised was what if the parent prevents the student from being able to receive full access. OPI struck "was able to receive". The requirement now would be that the school district has to offer access to the complete range of educational services for the basic education program.

**Ms. Quinlan** said that amendment 3. was requested by the MTSBA. Because students are enrolled, it is not enough to put them into eligibility with the MHSA if there are other eligibility requirements that the MHSA imposes.

Referring to amendment 11., **Ms. Quinlan** said that the language brings SB 359 in coordination with SB 224 which states that distance learning could be provided to a student and generate ANB funding under three circumstances: (1) the student is a resident of the district, (2) the student lives in the district and is eligible for free and appropriate public education under the Individuals With Disabilities Education Act (IDEA), and (3) the

student is attending school under a mandatory attendance agreement.

**Vote:** SEN. STORY'S motion to approve amendment #SB035902.ace carried unanimously by voice vote. SEN. ELLIOTT voted aye by proxy.

**Motion/Vote:** SEN. STORY moved that SB 359 DO PASS AS AMENDED. Motion carried unanimously by voice vote. SEN. ELLIOTT voted aye by proxy.

*{Tape: 4; Side: B; Time Counter: 22.7}*

**EXECUTIVE ACTION ON SB 263**

**Motion:** SEN. MANGAN moved that SB 263 DO PASS.

**Motion:** SEN. STORY moved the approval of amendment #SB026301.ace.

**EXHIBIT**(eds40a19)

**Discussion:**

SEN. STORY said that during the hearing on SB 263, he asked SEN. SQUIRES if it was her intention that the student regent appointment be for one year only and not a continuing appointment process. He felt that the Committee was given mixed signals. SB026301.ace give clarity to SB 263.

SEN. LASLOVICH said that he would not support either the amendment or the bill. He felt that a 1-year student-regent term was too short and that the Governor should have some latitude over the length of the appointments.

SEN. MCGEE felt the amendment made an already-bad bill worse.

**Motion:** SEN. STORY'S motion to approve amendment #SB026301.ace failed on a 10 to 1 voice vote with SEN. STORY voting aye. SEN. ELLIOTT voted nay by proxy.

**Discussion:**

SEN. RYAN said that SEN. SQUIRES wanted this bill in the 2003 Session. Because of timing, it was too late to bring the bill forward. He added that the language of SB 263 is that if a student is appointed to the student regent position and knowing that it is a 1-year term, the student regent can reapply for the



position. However, all students will be in the mix to determine whether the student regent is maintained. SB 263 does make sense because it gives more students the opportunity to have a voice.

**SEN. MANGAN** said that in the last 22 years, five student regents have served longer than one year and 79% have served for one year or less. All of the student regents have served well and there have been no issues. Where things become issues is when politics becomes involved. SB 263 takes away the politics in a sense, and he has supported the previous student regent appointments. He believed that student regent appointments should be for one year because of the importance of Montana's 2-year vocational colleges.

**SEN. MCGEE** said that according to the testimony in opposition to SB 263, they liked the current system and wanted someone appointed to the position who could be there for a longer period of time to advocate for all university students more effectively. Under current law, the Governor can appoint for one, two, or three years. The ability to experience multiple years is an important factor for the representation of the students.

***{Tape: 5; Side: A; Time Counter: 0.2}***

**SEN. HAWKS** felt that two years would be a better term, and the Governor needs flexibility. He felt that one of the problems was the student regents taking time out their life schedules to serve on the Board without any predictability as to when it is going to end. He would vote for SB 263 the way it was even if it is not as ideal as he would like to see it.

**SEN. GILLAN** asked if passed, would SB 263 affect the term of the current student regent. **Ms. Erickson** said no, because Ms. French was already appointed for a 3-year term. **SEN. GILLAN** said that this issue has been particularly difficult because the university students were so divided over the issue.

**Motion/Vote:** **SEN. MANGAN'S** motion that SB 263 DO PASS failed on a 2 to 9 voice vote with **SENATORS MANGAN** and **RYAN** voting aye. **SEN. ELLIOTT** voted nay by proxy.

**Motion/Vote:** **SEN. MCGEE** moved that SB 263 BE TABLED AND THE VOTE REVERSED. Motion carried 9 to 2 with **SENATORS MANGAN** and **RYAN** voting nay.

**ADJOURNMENT**

Adjournment: 8:15 P.M.

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SEN. DON RYAN, Chairman

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LOIS O'CONNOR, Secretary

DR/lo

Additional Exhibits:

**EXHIBIT ([eds40aad0.TIF](#))**